IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

SUIT NO. 19 OF 1985

Central Bank of India ....*Plffs.*
vs.
M/s. Vimal Corporation and Ors ....*Defnds.*

K.F. Merchant i/b. Little and Co. for the plffs.

None for the defnds.

CORAM: S.U. KAMDAR, J.

DATE : 5TH JULY, 2005.

P.C. :

1. The present suit is filed for the recovery of sum of Rs.60,663.94/- alongwith interest at the rate of 16.50% pa. The balance amount due and payable under the cash credit facility was Rs.27,574.70/- and storage charges payable to M/s.National Transport Company of sum of Rs.32,089.00/-.

2. It is the case of the plaintiff that on the

request of defendant no.1 to 4 sometime in or about August 1975 the plaintiff sanctioned cash credit facility with the limit of Rs.1,00,000/- and in consideration thereof the defendant executed a demand promissory note dated 11.8.1975, letter of continuing security dated 11.8.1975, agreement of pledge of goods dated 11.8.1975 and letter of partnership dated 11.8.1978. It is further the case of the plaintiff that on 7.10.1974 the defendant no.3 executed a demand promissory note for Rs.1,50,000/-. It is further the case of the plaintiff that the defendant no.1 has acknowledged and confirmed the liability dated 27.10.1978. In view of the fact that the said liability was admitted the defendant failed and neglected to make the payment and therefore the present suit is filed.

3. The plaintiff has produced the Books of Accounts of the defendant and at the foot of the same there is due and payable by the defendant to the plaintiff a sum of Rs.27,574.94/-. The said

Books of Account has been duly certified under the Bankers Books Evidence Act.

4. It is further the case of the plaintiff that inspite of the said facilities the defendant are further liable to pay Rs.33,089/- inrespect of goods pledged and also towards the storage charges.

5. In view of the aforesaid, the plaintiffs have filed the suit for the total claim of Rs.60,663.94/- with further interest at the rate of 16.50%.

6. Learned counsel appearing for the plaintiff states that subsequent to the filing of the suit the pledged goods have been sold for the sum of Rs.5000/- towards the sale proceeds of the said pledged goods. The plaintiffs have tendered compilation of documents and affidavit of evidence. The issues were framed by the court which reads as under :

1. Whether the defendants prove that the suit is barred by the law of limitation ?

2. Whether the plaintiff proves that the plaintiff extended cash credit facility to the defendants and thereunder of sum of Rs.27,574.94/- with further interest at the rate of 16.5.% p.a. is due and payable to them ?

3. Whether the plaintiff proves that the defendant is liable to pay the storage charges inrespect of the pledged goods with the National Transport Company, Bombay and whether thereof the defendant is liable to pay Rs.33,089.00/- ?

4. Whether the defendants proved that the suit is not maintainable for the reason stated in paragraphs 1 to 4 of the written statement ?

5. Whether the defendants prove that the letter dated 11th August, 1975 is not promissory note ?

6. Relief, if any ?

7. On the last occasion since none appeared for the defendants I had directed the plaintiffs to give notice to the advocate for the defendants and accordingly notice was given on 29.6.2005. On the said notice the learned advocate for the defendants has endorsed that he

has no instructions in the matter from his client. In view of the aforesaid the case of the plaintiff must be treated as proved. Examination in chief is not challenged. Compilation of documents to be marked Exhibit-G.1 colly. In view of the aforesaid I pass the following decree.

. There shall be decree in favour of the plaintiff and against the defendants for sum of Rs.60,663.94/- with further interest at the rate of 9%p.a. from the date of the suit till payment and or realisation. However the plaintiff will given credit for the same on the date of the receipt of the sale proceeds. The interest will be charged accordingly by the plaintiffs on the reduced balance. However there shall be no order as to costs.

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